

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Sherry Brand,

Plaintiff,

v.

Costco Wholesale Corporation, a
Washington Corporation; and Does
1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence

Demand For Jury

Plaintiff Sherry Brand complains of Defendants Costco Wholesale Corporation, a Washington Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who uses a wheelchair.

2. Defendant Costco Wholesale Corporation operated the Costco located at or about 220 Sylvania Drive, Santa Cruz, California, on July 12, 2013.

1 3. Defendant Costco Wholesale Corporation currently operates the
2 Costco located at or about 220 Sylvania Drive, Santa Cruz, California.

3 4. Defendant Costco Wholesale Corporation was the owner of the
4 property located at or about 220 Sylvania Drive, Santa Cruz, California, on
5 July 12, 2013.

6 5. Defendant Costco Wholesale Corporation is currently the owner of the
7 property located at 220 Sylvania Drive, Santa Cruz, California.

8 6. Plaintiff does not know the true names of Defendants, their business
9 capacities, their ownership connection to the property and business, or their
10 relative responsibilities in causing the access violations herein complained of,
11 and alleges a joint venture and common enterprise by all such Defendants.
12 Plaintiff is informed and believes that each of the Defendants herein,
13 including Does 1 through 10, inclusive, is responsible in some capacity for
14 the events herein alleged, or is a necessary party for obtaining appropriate
15 relief. Plaintiff will seek leave to amend when the true names, capacities,
16 connections, and responsibilities of the Defendants and Does 1 through 10,
17 inclusive, are ascertained.

18
19 **JURISDICTION & VENUE:**

20 7. This Court has subject matter jurisdiction over this action pursuant to
21 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
22 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

23 8. Pursuant to pendant jurisdiction, an attendant and related cause of
24 action, arising from the same nucleus of operative facts and arising out of the
25 same transactions, is also brought under California's Unruh Civil Rights Act,
26 and the California Disabled Persons Act, which acts expressly incorporate the
27 Americans with Disabilities Act.

28 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.

3
4 **FACTUAL ALLEGATIONS:**

5 10. The Plaintiff went to the Costco on July 12, 2013, to shop.

6 11. Costco is a facility open to the public, a place of public
7 accommodation, and a business establishment.

8 12. Restrooms are one of the facilities, privileges and advantages offered
9 by defendants to their customers at Costco.

10 13. Unfortunately, the women's restroom is not accessible because
11 defendants have placed the toilet paper dispenser above the grab bar in the
12 handicap-accessible stall. This configuration causes great difficulty for
13 plaintiff, who needs the space above the grab bar so that she can transfer to
14 and from her wheelchair.

15 14. The plaintiff personally encountered this problem. This inaccessible
16 restroom denied the plaintiff full and equal access and caused her difficulty.

17 15. Additionally, on information and believe, the plaintiff alleges that the
18 failure to remove these barriers was intentional because: (1) these particular
19 barriers are intuitive and obvious; (2) the defendants exercised control and
20 dominion over the conditions at this location and, therefore, the lack of
21 accessible facilities was not an "accident" because had the defendants
22 intended any other configuration, they had the means and ability to make the
23 change.

24 16. Plaintiff would like to return and patronize Costco but will be deterred
25 from visiting until the defendants cure the violation. Additionally, this
26 violation will deny full and equal access until the defendants provide an
27 accessible women's restroom.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of plaintiffs and against all defendants (42 U.S.C. section 12101, et seq.)

17. Plaintiffs replead and incorporate by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint.

18. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. See 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by

1 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

2 19. Pursuant to the Americans with Disabilities Act, section 4.17 of the
3 ADAAG, Fig. 30(d), and CBC 1115B.8.4, the toilet paper dispenser shall be
4 placed below the grab bars in the toilet stall.

5 20. In our case, the defendants failed to provide an accessible women's
6 restroom because they have placed the toilet paper dispenser above the grab
7 bar in the toilet stall and, therefore, failed to provide full and equal access to
8 wheelchair users such as the plaintiff.

9 21. The Defendants are persons who own, operate, lease or lease to a place
10 of public accommodation. As such, the Defendants are required to ensure
11 that persons with disabilities are not discriminated against and, additionally,
12 have specific duties to (1) ensure that all construction, alteration, or
13 modification is barrier free and complies with the Americans with Disabilities
14 Act Accessibility Guidelines ("ADAAG"); and/or (2) remove all existing
15 barriers where such removal is "readily achievable," and/or (3) to provide
16 alternatives to barrier removal. The Defendants have failed to meet these
17 obligations.

18 22. Because the defendants violated the plaintiff's rights under the ADA,
19 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
20 Code § 51(f), 52(a).)

21 23. Because the violation of the Unruh Civil Rights Act resulted in
22 difficulty, discomfort or embarrassment for the plaintiff, the defendants are
23 also each responsible for statutory damages, *i.e.*, a civil penalty. (Civ. Code §
24 55.56(a)-(c).)

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 2 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
 3 51-53)

4 24. Plaintiffs replead and incorporate by reference, as if fully set forth
 5 again herein, the allegations contained in all prior paragraphs of this
 6 complaint.

7 25. Because the defendants violated the plaintiffs' rights under the ADA,
 8 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
 9 Code § 51(f), 52(a).)

10 26. Because the violation of the Unruh Civil Rights Act resulted in
 11 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
 12 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
 13 55.56(a)-(c).)

14
 15 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
 16 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
 17 defendants) (Cal Civ. § 54-54.8)

18 27. Plaintiffs replead and incorporate by reference, as if fully set forth
 19 again herein, the allegations contained in all prior paragraphs of this
 20 complaint.

21 28. Because the defendants violated the plaintiffs' rights under the ADA,
 22 they also violated the Disabled Persons Act and are liable for damages. (Civ.
 23 Code § 54.1(d), 54.3(a).)

24 29. Because the violation of the Disabled Persons Act resulted in difficulty,
 25 discomfort or embarrassment for the plaintiffs, the defendants are also each
 26 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
 27 (c).)

1 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
2 and against all defendants)

3 30. Plaintiffs replead and incorporate by reference, as if fully set forth
4 again herein, the allegations contained in all prior paragraphs of this
5 complaint.

6 31. The Defendants had a general duty and a duty arising under the
7 Americans with Disabilities Act and the Unruh Civil Rights Act and
8 California Disabled Persons Act to provide safe, convenient, and accessible
9 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding
10 paragraphs, has caused injury and damage as alleged above.

11
12 **PRAYER:**

13 Wherefore, Plaintiffs pray that this court award damages and provide
14 relief as follows:

15 1. For injunctive relief, compelling defendants to comply with the
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
17 Plaintiffs are not invoking section 55 of the California Civil Code and is not
18 seeking injunctive relief under the Disabled Persons Act at all.

19 2. Damages under the Unruh Civil Rights Act and/or the California
20 Disabled Persons Act which damages provide for actual damages and a
21 statutory minimum of \$4,000. Note: a plaintiff cannot recover under both
22 acts, simultaneously, and an election will be made prior to or at trial.

23 3. Reasonable attorney fees, litigation expenses and costs of suit,
24 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ.
25 Proc. § 1021.5.

1 Dated: September 26, 2013 CENTER FOR DISABILITY ACCESS

2 /s/ Raymond G. Ballister

3 By:_____

4 Raymond G. Ballister, Jr, Esq.

5 Attorneys for Plaintiffs

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a jury for all claims for which a jury is
8 permitted.

9
10 Dated: September 26, 2013

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11 /s/ Raymond G. Ballister

12 By:_____

13 Raymond G. Ballister, Jr, Esq.

14 Attorneys for Plaintiff
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